



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



Thomas S. Burack, Commissioner

March 8, 2007

The Honorable Judith T. Spang, Chairman  
House Resources, Recreation and Development Committee  
Room 305  
Legislative Office Building  
Concord, New Hampshire 03301

**SUBJECT: HB 903-FN, Prohibiting delivery of oil to non-compliant underground storage facilities**

Dear Chairman Spang:

Thank you for the opportunity to testify on House Bill 903-FN, which prohibits delivery of oil to non-compliant underground storage facilities, establishes a procedure for rescinding the prohibition once compliance is achieved and establishes penalties for violations of the statute. The bill is supported by both the Department of Environmental Services (DES) and the Oil Fund Disbursement Board (Board), which oversees the Oil Discharge and Disposal Cleanup Fund (Fund) established under RSA 146-D. The Fund was established to provide insurance to owners of underground storage tanks against the release of petroleum products to the soil, groundwater and surface water of the State. The Board is composed of members representing the Legislature (two Representatives and two Senators), petroleum distributors, facility owners, state agencies and the general public.

An oil delivery prohibition is required under new federal grant guidelines for states receiving federal Underground Storage Tank (UST) and Leaking Underground Storage Tank (LUST) program funds. The federal deadline for implementing the delivery prohibition is August 8, 2007. Presently, New Hampshire receives \$187,500 per year in federal UST funds and \$750,000 per year in federal LUST funds. Conformance with the new grant guidelines is important and necessary for the state to continue receiving these funds.

The legislation authorizes DES to "red tag" fill pipes to alert fuel delivery companies that a particular UST should not be filled. DES currently inspects all USTs to determine operational compliance, and has a high success rate in reaching agreements with UST owners to correct deficiencies. A red-tag would only be affixed upon failure to reach a compliance agreement with the UST owner. The legislation does not impose any new costs on UST owners, since maintaining operational compliance is an existing requirement under RSA 146-C. There is no additional cost to the state to implement delivery prohibition. Tanks will be red-tagged by existing DES compliance staff using existing resources.

DES and the Board worked with the petroleum distributors and facility owners to develop this legislation. Since that time, the petroleum industry has provided additional comments to DES. The industry has suggested a revision to the procedure for rescinding the delivery prohibition and removing the red-tag. Currently the legislation requires DES to re-inspect the facility to

determine compliance before removing the red-tag. The industry has recommended compliance be determined by either a DES re-inspection or submission of written documentation by the facility owner. This would eliminate any delays associated with scheduling a re-inspection, allowing a compliant tank to return to operation as soon as possible. We concur with this approach. DES could still perform a follow-up inspection at a later date to verify compliance.

We also suggest two technical corrections to the legislation. The new sections should start with section 146-C:14 and not section 146-C:15, since the last section in the existing statute is 146-C:13. Also, we request that the effective date of the bill be changed from January 1, 2008 to July 1, 2007 in order to meet the federal deadline of August 8, 2007 for implementing delivery prohibition.

Finally, the penalties provisions of the legislation were included at the request of the Attorney General's Office (AGO). The change is required to make RSA 146-C consistent with other environmental statutes and allow the AGO to seek penalties for violation of RSA 146-C.

In summary, enactment of HB 903-FN into law is critical to maintaining the federal funding necessary to run the state UST and LUST programs. We appreciate the opportunity to testify on this bill. If you have any questions regarding this letter of testimony, please do not hesitate to call either one of us or George Lombardo, P.E. of the Waste Management Division, at 271-3645.

Sincerely,

  
for Thomas S. Burack, Commissioner  
Department of Environmental Services

  
Kevin A. Sheppard, Chairman  
Oil Fund Disbursement Board

cc: Rep. Chris Christensen  
Sen. Robert J. Letourneau